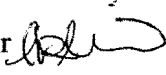


## **MEMORANDUM**

June 7, 2012

**TO:** Audit Committee

**FROM:** Leslie Rubin, Audit Contract Administrator   
Office of Legislative Oversight

**SUBJECT:** Resolution to Authorize Council Contract for Audit Services

**Staff Recommendation:** Recommend Council approval of a resolution authorizing the Council President to contract with BDO USA, LLP to conduct the audit of the FY12 financial statements.

A Council resolution to authorize the Council President to contract for the audit of the County Government, Employee Retirement Plan, and Montgomery County Union Employees Deferred Compensation Plan financial statements for the fiscal year ending June 30, 2012 and the calendar year ending December 31, 2012 is attached at ©1. The Council is scheduled to introduce and take action on the resolution on June 12, 2012.

### **Background**

Section 315 of the Montgomery County Charter states: "The Council shall contract with, or otherwise employ, a certified public accountant to make annually an independent post audit of all financial records and actions of the County, its officials and employees."

The Montgomery County Code (Section 33-51(c)) also indicates that an independent audit of the retirement system will be completed annually by the firm of certified public accountants under contract with the Council.

This was the fourth and final year of the Council's contract with CliftonLarsonAllen LLP to conduct the audit of the County Government financial statements; the audit of the Employee Retirement Plans financial statements; and other reviews, tests and certifications.

### **Auditor Selection Process**

On September 15, 2011, the Council issued a Request for Proposals (RFP) to conduct the audits of the financial statements for the fiscal year ending June 30, 2012 and the calendar year ending December 31, 2012. OLO and the Audit Committee completed the procedures for the selection of an independent auditor specified in Council Resolution 16-326. Following interviews with the top rated firms, the Audit Committee chose to enter into contract negotiations with BDO USA, LLP.

## **Overview of the Contract**

A draft contract between the Council and BDO USA, LLP is attached beginning at ©3. The County Attorney's Office has reviewed the draft contract for form and legality. The attached draft contract for review does not include copies of the original RFP or the Contractor's proposal. Both of these items will be included in their entirety as part of the final contracts, and copies are available upon request.

**Scope of Work.** The contract with BDO USA requires the firm to complete the:

- Audit of the County Government Basic Financial Statements,
- Single Audit or Audit of Expenditures of Federal Awards,
- Agreed-Upon Procedures for the National Transit Database Report,
- Agreed-Upon Procedures for the Chief Financial Officer's Annual Certification of Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities,
- 9-1-1 System Audit,
- Employee Retirement Plans Basic Financial Statements Audit, and
- Montgomery County Union Employees Deferred Compensation Plan Financial Statements Audit.

The contract also requires BDO USA to complete management letters for the County Government and the Employee Retirement Plans audits, and to assist the County to comply with the standards for the Government Finance Officers Association (GFOA) Certificate of Achievement.

**Deliverables and Responsibilities.** The contract specifies specific deliverables and due dates. The deliverables include regular status reports to the Contract Administrator and a briefing with the Audit Committee upon completion of the work.

Articles III and IV list the responsibilities of the Contractor, the County Government, and the Montgomery County Union Employees Deferred Compensation Plan. The County Responsibilities section specifies the tasks required of the Department of Finance, Board of Investment Trustees, Department of Public Works and Transportation, and Department of Technology Services to support the audit.

**Cost.** Article V specifies the cost of the audit work, the sources of funds, and the departments responsible for approving invoices and making payments.

The cost of the contract with BDO USA totals \$315,440. It includes:

- \$243,466 for the audit of the County Government Financial Statements and the Single Audit. The source of funds in the Independent Audit NDA;
- \$36,720 for the audit of the Employee Retirement Plans Financial Statements. The source of funds is the Employees' Retirement System, the Retirement Savings Plan, and the County's General Fund;
- \$18,000 for the audit of the financial statements of the Montgomery County Union Employees Deferred Compensation Plan. The source of funds is the Independent Audit NDA;
- \$10,000 for the Agreed-Upon Procedures for the National Transit Database Report. The source of funds is the Independent Audit NDA;

- \$4,450 for the 9-1-1 System Audit. The source of funds is the State of Maryland Emergency Number Systems Board; and
- \$2,804 for the Agreed-Upon Procedures for the Chief Financial Officer's Annual Certification of Financial Assurance Mechanisms for Local Government Owners and Operations of Municipal Solid Waste Landfill Facilities. The source of funds is the Solid Waste Disposal Fund.

The contract indicates that the prices are firm for two years. The contractor may request, subject to Council approval, price adjustments in the third and/or fourth years of the contract.

**Term.** The term of the contract is fifteen months from the date of signature by the Council President. During the first engagement period, the contractor will complete the audits of financial statements for the fiscal year ending June 30, 2012 and the calendar year ending December 31, 2012. The Council may renew the contracts, one year at a time, for three additional one year periods. Upon renewal, the contractor will complete the audits of financial statements for the fiscal years ending June 30, 2013, 2014, and 2015 and December 31, 2013, 2014, and 2015.

Resolution \_\_\_\_\_  
Introduction \_\_\_\_\_  
Adopted \_\_\_\_\_

COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND

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By County Council

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**SUBJECT: Council Contract for Audit Services**

Background

1. Section 315 of the Montgomery County Charter states that: "The Council shall contract with, or otherwise employ, a certified public accountant to make annually an independent post audit of all financial records and actions of the County, its officials and employees."

The Montgomery County Code (Section 33-51(c)) indicates that: "An independent audit of the retirement system will be completed annually by the firm of certified public accountants under contract with the Council."

The Montgomery County Code (Section 21-24(d)) states that: "Financial transactions involving County fire tax funds must be included in the annual audit required by the Charter."

2. Council Resolution No. 16-326, adopted October 2, 2007, established Council procedures for the selection of the independent auditor. The procedures direct the Council's Management and Fiscal Policy Committee to perform the functions of the Contractor Qualification and Selection Committee, including reviewing and evaluating proposals and recommending independent auditors to the County Council.
3. Council Resolution No. 16-826, adopted January 27, 2009, established a Council Audit Committee consisting of the members of the Management and Fiscal Policy Committee (currently known as the Government Operations and Fiscal Policy Committee) and the Council President and Council Vice President as ex officio members. The Audit Committee is charged with providing oversight of, among other things, County audit activities and fulfills the functions of the Management and Fiscal Policy Committee established in Council Resolution No. 16-326.

4. The procedures in Council Resolution No. 16-326 indicate that the final selection of the independent auditor will be made by the County Council.
5. The Audit Committee unanimously recommends the firm of BDO USA, LLP to conduct the audit of the County Government financial statements for the fiscal year ending June 30, 2012; the audit of the Employee Retirement Plans financial statements for the fiscal year ending June 30, 2012; the audit of the Montgomery County Union Employees Deferred Compensation Plan financial statements for the calendar year ending December 31, 2012; and other tests, reviews and certifications. The Council may renew the contract with BDO USA, LLP to complete the audits for the fiscal years ending June 30, 2013, 2014, and 2015 and the calendar years ending December 31, 2013, 2014, and 2015.

#### Action

The County Council for Montgomery County, Maryland approves the Audit Committee recommendation and authorizes the Council President to contract with BDO USA, LLP to conduct the audit of the County Government financial statements for the fiscal year ending June 30, 2012; the audit of the Employee Retirement Plans financial statements for the fiscal year ending June 30, 2012; the audit of the Montgomery County Union Employees Deferred Compensation Plan financial statements for the calendar year ending December 31, 2012; and other tests, reviews and certifications.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

## CONTRACT NUMBER 1012283

This contract is entered into between MONTGOMERY COUNTY, MARYLAND, on behalf of the County Council for Montgomery County, Maryland (collectively referred to in this Contract as the "County Council," "County" or "Council"), and BDO USA, LLP, 7101 Wisconsin Avenue, Suite 800, Bethesda, MD 20814 ("Contractor").

### BACKGROUND

1. Section 315 of the Montgomery County Charter states "The Council shall contract with, or otherwise employ, a certified public accountant to make annually an independent post audit of all financial records and actions of the County, its officials and employees." The Montgomery County Code Section 33-51(c) indicates that an independent audit of the retirement system will be completed annually by the firm of certified public accountants under contract with the Council.
2. On September 19, 2011, the Council's Audit Committee issued Request for Proposal (RFP) #1012283 to obtain a Contractor to conduct an independent audit of the basic financial statements of Montgomery County; an independent audit of the basic financial statements of the Montgomery County Employee Retirement Plans; an independent audit of the financial statements of the Montgomery County Union Employees Deferred Compensation Plan; and additional services related to reviews, tests, and certifications.
3. The Audit Committee evaluated the submitted proposals in accordance with evaluation criteria in the RFP and recommended BDO USA, LLP, a certified public accounting firm, for Contract award.
4. The Council adopted Resolution No. \_\_\_\_\_ on \_\_\_\_\_, authorizing the Council President to contract with BDO USA, LLP to conduct the independent audits, reviews, tests, and certifications for the fiscal year ending June 30, 2012.
5. The Council and Contractor agree to the following terms:

### ARTICLE I. SCOPE OF WORK

- A. **Basic Work.** The Contractor must complete the following Basic Work upon receipt of a notice-to-proceed from the Contract Administrator:
- 1) **County Government Basic Financial Statements Audit** – The Contractor must audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of Montgomery County. The Contractor must prepare an Independent Auditors' Report to express opinions on whether the basic financial statements fairly present, in all material respects, the financial position of the County. The Contractor's opinion may place reliance on reports issued by other Contractors as they relate to component units. The Contractor must conduct the audit in accordance with auditing standards generally accepted in the United State of America and the *Government Auditing Standards* issued by the Comptroller General of the United States.
  - 2) **Single Audit** – As required by Federal Office of Management and Budget (OMB) Circular A-133, the Contractor must a) examine the Montgomery County Report on Expenditures of Federal Awards, b) complete the auditor's portion of the Single Audit Act data collection form, c) review internal accounting and administrative controls, d) examine the status of prior year findings and questioned costs, and e) perform any other work required by or necessary for the County to comply with OMB Circular A-133.

## Article I. Scope of Work (continued)

The Contractor must prepare:

- An Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting Based on an Audit of Financial Statements in Accordance with *Government Auditing Standards*,
  - An Independent Auditors' Report on Compliance with Requirements Applicable to Each Major Program, Internal Control Over Compliance, and Schedule of Expenditures of Federal Awards in Accordance with OMB Circular A-133, and
  - Schedule of findings and questioned costs.
- 3) **Maryland State Uniform Financial Report** – The Contractor must review and attest to the County's uniform financial report submitted to the Maryland State Department of Legislative Services and transmit completed forms as required.
  - 4) **Arbitrage** – The Contractor must review and report on the calculation of rebate amount under the U.S. Treasury arbitrage rebate requirements (if applicable).
  - 5) **Fiscal Year Closing** – The Contractor must participate in the annual planning meeting with the component units included in the Montgomery County, Maryland reporting entity. Participants will discuss the fiscal year closing process, and identify any issues that may impact the timing of the closing. The Contractor must specifically discuss mandated or proposed accounting and reporting changes that would apply to the current fiscal year and subsequent fiscal years.
  - 6) **Agreed-Upon Procedures for the National Transit Database (NTD) Report** – The Contractor must apply agreed-upon procedures to the National Transit Database (NTD) Report prepared by Montgomery County to assist the County to evaluate whether the information included in the Federal Funding Allocation Statistics Form conforms to Federal Transit Administration requirements. The Contractor must prepare an Independent Auditors' Report on applying agreed-upon procedures to the NTD Report's Federal Funding Allocation Statistics Form.
  - 7) **Agreed-Upon Procedures for the Chief Financial Officer's Annual Certification of Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities** – To comply with Federal Environmental Protection Agency Regulation 40 CFR Part 258, the Contractor must review and perform agreed-upon procedures to the Chief Financial Officer's Annual Certification of Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities. The Contractor must prepare an Independent Auditors' Report on Applying Agreed-Upon Procedures.
  - 8) **9-1-1 System Audit** – The Contractor must conduct an audit of the Schedule of Maintenance and Operating Revenues and Expenditures of the County's 9-1-1 System. The Contractor must submit a Schedule of Maintenance and Operating Revenues and Expenditures and an Independent Auditors' Report to express opinions on the Schedule of Maintenance and Operating Revenues and Expenditures.

## Article I. Scope of Work (continued)

- 9) **Employee Retirement Plans Basic Financial Statements Audit** – The Contractor must audit the Comprehensive Annual Financial Report of the Montgomery County Employee Retirement Plans. The Contractor must prepare:

- An Independent Auditors' Report to express opinions on whether the financial statements fairly present, in all material respects, the financial position of the retirement plans, and
- An Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting Based on an Audit of Financial Statements in Accordance with *Government Auditing Standards*.

- 10) **Montgomery County Union Employees Deferred Compensation Plan Audit** – The Contractor must audit the financial statements of the Montgomery County Union Employees Deferred Compensation Plan for calendar year 2012. The audit must be performed in accordance with *Government Auditing Standards*. The Contractor must prepare:

- An Independent Auditors' Report to express opinions on whether the financial statements fairly present, in all material respects, the financial position of the deferred compensation plan, and
- An Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting Based on an Audit of Financial Statements in Accordance with *Government Auditing Standards*.

- 11) **Management Letters** – At the completion of the annual audit, the Contractor must submit three (3) management letters to the Council related to the:

- a. Basic financial statements of the Montgomery County Government,
- b. Basic financial statements of the Montgomery County Employee Retirement Plans, and
- c. Basic financial statements of the Montgomery County Union Employees Deferred Compensation Plan.

The letters must communicate any significant deficiencies or control deficiencies found during the audit. A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of financial statements will not be prevented, or detected and corrected on a timely basis. The Contractor must include comments, recommendations, and suggested improvements in accounting procedures, internal controls, management actions, and other relevant areas.



## Article I. Scope of Work (continued)

12) **Government Finance Officers Association (GFOA) Certificates of Achievement for Excellence in Financial Reporting** – The Contractor must assist the County to ensure that the following comply with the GFOA standards for the Certificate of Achievement:

- a. The Montgomery County Government Comprehensive Annual Financial Report, and
- b. The Montgomery County Employee Retirement Plans Comprehensive Annual Financial Report.

The GFOA standards require financial disclosure greater than required under generally accepted accounting principles.

**B. Optional Work.** The Council, acting through the Audit Committee, may select areas for special attention by the Contractors. Additionally, the County's Department of Finance may request consulting services on specific financial reporting requirements. The County Council will amend the Contract to add optional work. The Contractor will begin work only after receipt of a notice-to-proceed. Optional work may include, but is not limited to:

- 1) **Auditing Services** – The County may require additional audits or audit related services.
- 2) **Accounting Services** – The County may require professional accounting services from the Contractor to a) assist with the close of the County's books, b) assist with preparation of draft schedules to support each fund and draft financial statements, and c) provide other related professional services.
- 3) **Comfort or Consent Letters** – The County may require that the Contractor perform tests and analyses, in accordance with generally accepted auditing standards, to issue a consent letter authorizing the County to use the Auditors' opinion in County debt offering documents.

The County may also require that the Contractor perform tests and analysis, in accordance with generally accepted auditing standards, to update the Contractor's opinion and issue a comfort letter to include in County debt offering documents.

**C. Additional Work.** The Council may authorize by contract amendment additional work within the general scope of this Contract. The Contractor should not perform any additional work without first signing a contract amendment and receiving a notice-to-proceed from the Contract Administrator.

**D. Changes to Scope of Services.** The Council may amend the terms of this Contract upon the issuance of accounting or auditing standards that significantly affect the Contractor's scope of work. The Council and Contractor will agree on the Contract modification before the Contractor performs the work. The Contractor will begin work after receipt of a notice-to-proceed.

## **ARTICLE II. DELIVERABLES**

**A.** The Contractor must provide up to 20 hard copies and an electronic copy of the following deliverables by December 15<sup>th</sup> of each year this Contract is in effect to be incorporated in the County Government and Employee Retirement Plans Comprehensive Annual Financial Reports (CAFR) in time for submission for the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting program:

## Article II. Deliverables (continued)

- 1) Independent Auditors' Report to express opinions on the basic financial statements of the Montgomery County Government (CAFR version),
- 2) Independent Auditors' Report to express opinions on the basic financial statements of the Montgomery County Government (lifiable version),
- 3) Independent Auditors' Report to express opinions on the basic financial statements of the Montgomery County Employee Retirement Plans, and
- 4) Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting of the Montgomery County Employee Retirement Plans Based on an Audit of the Financial Statements in Accordance with *Government Auditing Standards*.

B. The Contractor must provide up to 20 hard copies and an electronic copy of the following deliverables by December 15<sup>th</sup> of each year this Contract is in effect:

### Single Audit

- 1) Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting Based on an Audit of the Financial Statements in Accordance with Government Auditing Standards,
- 2) Independent Auditors' Report on Compliance with Requirements Applicable to Each Major Program, Internal Control Over Compliance, and Schedule of Expenditures of Federal Awards in Accordance with OMB Circular A-133,
- 3) Schedule of findings and questioned costs, and
- 4) Auditor's portion of the Single Audit Act data collection form.

### Agreed-Upon Procedures

- 5) Independent Auditor's Report on Applying Agreed-Upon Procedures to the Federal Funding Allocation Statistics Form of the National Transit Database Report, and
- 6) Independent Auditor's Report on Applying Agreed-Upon Procedures to the Chief Financial Officer's Annual Certification of Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities.

### 9-1-1 System Audit

- 7) Report on the Schedule of Maintenance and Operating Revenues and Expenditures for the County's 9-1-1 System, including the Independent Auditor's Report on the Schedule of Maintenance and Operating Revenues and Expenditures of the County's 9-1-1 System.

### Other

- 8) Auditor signature page of the Maryland State Uniform Financial Report, and
- 9) Report on the calculation of rebate amount under the U.S. Treasury arbitrage rebate requirements (if applicable).

## Article II. Deliverables (continued)

C. The Contractor must provide up to 20 hard copies and an electronic copy of the following deliverables by March 1<sup>st</sup> of each year this Contract is in effect:

- 1) Management Letter related to the audit of the financial statements of Montgomery County, and
- 2) Management Letter related to the audit of the financial statements of the Montgomery County Employee Retirement Plans.

### Montgomery County Union Employees Deferred Compensation Plan Audit

- 3) Independent Auditors' Report to express opinions on the basic financial statements of the Montgomery County Union Employees Deferred Compensation Plan,
- 4) Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting of the Montgomery County Union Employees Deferred Compensation Plan Based on an Audit of the Financial Statements in Accordance with *Government Auditing Standards*, and
- 5) Management Letter related to the audit of the financial statements of the Montgomery County Union Employees Deferred Compensation Plan.

D. Additional required deliverables include, but are not limited to the following:

- 1) Before beginning work, the Contractor must submit to the Contract Administrator a written detailed audit plan. The plan must include personnel assignments and estimated completion dates for each major audit segment. The Contractor must also participate in a planning meeting with the Contract Administrator and County staff to review the Contractor's audit plan. The Contractor must make adjustments to the audit plan as requested by the County so long as such adjustments are not contrary to generally accepted accounting or auditing standards.
- 2) The Contractor must submit written monthly reports to the Contract Administrator summarizing progress to date and any accounting or auditing concerns that may impact items in the Scope of Work, and
- 3) The Contractor must brief the Council's Audit Committee on the Contractor's reports and Management Letters, provide an overview of mandated or proposed accounting and reporting changes that would apply to the current fiscal year and subsequent fiscal years, and answer Councilmember questions.

E. The Contractor may submit a written request to the Contract Administrator for an extension of a due date for a deliverable when unforeseen circumstances impact the Contractor's work. The Director of the Office of Legislative Oversight, or the Director's designee, will determine, in his or her sole discretion, whether to approve the extension of a due date based on the merits of the Contractor's written request.

F. The Contractor and Council agree that the Council may withhold ten percent (10%) of the final payment to the Contractor in the event of Contractor's failure to provide the deliverables within the time periods designated in this Contract, or within any extended time period approved by the Director of the Office of Legislative Oversight or the Director's designee.

### **ARTICLE III. CONTRACTOR RESPONSIBILITIES**

- A. **Staffing.** The key personnel specified in the Contractor's Proposal dated November 3, 2011 and the Contractor's April 26, 2012 letter requesting to adjust key personnel must complete the items in Article I. "Scope of Work". Key personnel include the Engagement Partners-In-Charge, Audit Review Partner, Information Systems Partner, Senior Manager(s), Senior Associates(s), and Information Systems Manager(s).

The Contractor must notify the Contract Administrator in writing if it becomes necessary to replace any of the key personnel. The Contractor must provide the resumes for new personnel assigned to the work, and the new personnel's qualifications and experience must be at least equal to those of the replaced staff. The Contract Administrator must approve the personnel change in writing prior to the change taking place.

- B. **Subcontractors.** The Contractor will subcontract to a certified minority, female, or disabled-owned firm in accordance with the "Minority-Owned Business Addendum to the General Conditions of Contract Between County and Contractor" and the "Minority, Female, Disabled Person Subcontractor Performance Plan." Those documents are attached to this Contract in Attachment B.

- C. **Accounting and Auditing Standards.** The Contractor must conduct the audits in accordance with the accounting and auditing standards listed below, if and as applicable. Each item in Article I. "Scope of Work", Paragraph A. **Basic Work** is not subject to every accounting and auditing standard listed below. The accounting and auditing standards apply to the individual items in Article I, Paragraph A. based on regulatory and/or accounting industry guidelines. Any Contractor or Contract Administrator uncertainty about which accounting and auditing standards listed below apply to each item in Article I, Paragraph A. will be resolved based on mutual agreement between the Contractor and Contract Administrator.

- 1) Governmental Accounting Standards Board (GASB) "Codification of Governmental Accounting and Financial Reporting Standards" and other GASB publications,
- 2) Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants, including the industry audit guides for "Audits of State and Local Governmental Units,"
- 3) Government Auditing Standards, Comptroller General of the United States,
- 4) Single Audit Act of 1984, as amended in 1996,
- 5) OMB Compliance Supplement of Single Audits of State and Local Governments,
- 6) OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations,"
- 7) OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments,"
- 8) OMB Catalog of Federal Domestic Assistance,
- 9) OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments,"
- 10) Audit Guidelines prescribed by the Legislative Auditor of the State of Maryland,
- 11) Audit Guidelines for examination of 9-1-1 Trust Funds, as prescribed by the Emergency Number Systems Board of the Maryland Department of Public Safety and Correctional Services,
- 12) Examination Guidelines and Certification Requirements prescribed by the Urban Mass Transit Transportation Administration,
- 13) *Federal Information System Controls Auditing Manual*, if applicable,
- 14) *Consideration of Fraud in a Financial Statement Audit* (Statement On Auditing Standards No. 99),

### Article III. Contractor Responsibilities (continued)

- 15) Government Finance Officers Association's *Governmental Accounting, Auditing, and Financial Reporting*, and
- 16) Other professional auditing/accounting standards issued, as appropriate.

- D. Irregularities and Illegal Acts.** The Contractor must report promptly in writing any irregularities and illegal acts that the Contractor becomes aware of to the Contract Administrator, County Council President, Chief Administrative Officer, Department of Finance Director, and the Manager of the Office of Internal Audit in the Office of the County Executive.
- E. County's Computer System.** The Contractor and Subcontractor must comply with the County's computer and e-mail security policies, a copy of which shall be provided to the Contractor and Subcontractor by the County.
- F. County's Accounting System and Records.** Montgomery County's on-line computerized accounting and financial reporting system, Oracle eBusiness Suite (EBS), will be available to the Contractor. The Contractor must modify techniques and procedures, if necessary, to be compatible with the County's on-line systems. The Contractor must use the on-line nature of the accounting system to the fullest extent possible.
- G. Access to County Records and Staff.** The Contractor will have access to County records and staff for the purposes of interviews and verification of items within the terms of the audit. The Contractor must coordinate mutually-agreed-upon dates for field work with County personnel. The Contractor must maintain County records as privileged and confidential information. If granted either physical or data rights, the Contractor must only access those items necessary to perform the audit.

The Contractor must organize the work in such a way as to minimize the disruption of County employees' normal duties. The Contractor must coordinate with County personnel prior to requesting electronic data in order to mutually agree upon relevant data specifications, layout, form of requests, and timing of responses. The Contractor must provide the County at least three (3) full business days to prepare written or oral responses to Contractor requests for information, unless the Contractor and County staff from whom the information is requested agree on an alternative time frame. The Contractor must notify the Contract Administrator if the Contractor and County staff cannot agree on an alternative time frame. The Contract Administrator will negotiate an alternative time frame.

- H. Confidential Information.** Some material reviewed by the Contractor in performance of this Contract will be confidential or proprietary. The Contractor must not divulge confidential or proprietary information to any party other than authorized officers of the County Council and other County officials directly involved in this Contract. The Contractor may be required to sign a confidentiality agreement before being given access to some material.

The County understands and acknowledges that the Contractor is a Certified Public Accounting firm governed by statutes and related regulations regulating the practice of public accounting in the state of Maryland (State). As such, under those statutes and regulations the Contractor is prohibited from disclosing confidential client information. The provisions of this Confidentiality Agreement do not change or alter in any way the Contractor's obligations under those statutes or regulations.

### **Article III. Contractor Responsibilities (continued)**

The County also understands and acknowledges that as a firm of Certified Public Accountants, the Contractor is subject to regulatory oversight including "inspection" and "peer reviews" by a variety of bodies including, but not limited to, the Public Company Accounting Oversight Board, the Center for Public Company Audit Firms, the Securities and Exchange Commission, and the boards of accountancy in the states in which the Contractor practices. The County understands and agrees that in order for the Contractor to comply with its obligation for regulatory oversight, the Contractor, without further notice or permission from the County, may provide access to Information subject to this Confidentiality Agreement contained in the files and records of the Contractor for review by regulatory bodies in the normal course of the exercise of their regulatory oversight of the Contractor.

- I. Publication or Release of Data.** The Contractor must not publish or release, without written concurrence of the County Council, any data, tentative conclusions, reports, correspondence, descriptions, procedures, calculations, compilations, or other information relative to this Contract.
- J. Communication with the Component Units Included in the Montgomery County, Maryland Reporting Entity.** The component units included in the Montgomery County reporting entity include:
- Montgomery County Public Schools,
  - Montgomery Community College,
  - Housing Opportunities Commission of Montgomery County,
  - Montgomery County Revenue Authority, and
  - Bethesda Urban Partnership, Incorporated.

A copy of all correspondence from the Contractor to the component units, as it pertains to the scope of this contract, must be sent to the Controller in the Department of Finance and to the Contract Administrator at the same time the correspondence is sent to the addressee.

- K. Other Contracts with the County.** To avoid conflict of interest or unfair advantage, the Council's Audit Committee must approve any additional work that the Contractor or its affiliates propose to perform for Montgomery County during the period of this Contract. The Contractor must inform the Contract Administrator of additional work the Contractor proposes to complete for the County. The Audit Committee must first verify that the proposed work creates no conflict of interest or unfair advantage before the Contractor can undertake such work.
- L. Verification and Audits.** The Contractor and all subcontractors must maintain for a period of five (5) years, books, records, documents, and other evidence directly pertinent to the performance of work under this contract ("audit documentation"), in accordance with appropriate accounting procedures and generally accepted government auditing standards. The Contractor must make audit documentation available, upon written request, in a timely manner to other auditors or reviewers in accordance with generally accepted government auditing standards. At the County's request, the Contractor must provide proper facilities within its offices during normal business hours, for purposes of making audit documentation available to such other auditors or reviewers.

#### **ARTICLE IV. COUNTY AND MCUEDCP RESPONSIBILITIES**

- A. **Invoices.** The County will pay the Contractor within thirty (30) days of approval of the Contractor's invoice.
- B. **Access to County Records and Staff.** The County must provide the Contractor access to County records and reasonable access to the County staff for purposes of interviews and verification of items within the terms of the contract.

- C. **Access to Montgomery County Union Employees Deferred Compensation Plan Records and Staff.** In a November 16, 2009 letter to the Chair of the County Council's Management and Fiscal Policy Committee, the Board of Trustees of the Montgomery County Union Employees Deferred Compensation Plan (MCUEDCP) agreed to an external auditing firm, under contract with the County Council, performing an audit of the MCUEDCP using the same manner, processes, and standards as are used when conducting the audits of the County's other accounts and plans.

The Montgomery County Union Employees Deferred Compensation Plan will be the source of records for this work. The Montgomery County Union Employees Deferred Compensation Plan should provide the Contractor access to its records and reasonable access to its staff for the purposes of interviews and verification of items within the terms of the contract. The Contractor must report any problems receiving access to MCUEDCP's records and staff to the Contract Administrator as soon as practicable.

- D. **Department of Finance Support.** The Department of Finance must provide limited, temporary space to examine records and documents during the audit, and the capability to view on-line documents. The Department of Finance must also:

- 1) Type confirmation requests and other correspondence requesting information from outside entities,
- 2) Provide access to on-line documents, which should be used to the fullest extent possible by the Contractor, and retrieve and replace source documents located in the Department,
- 3) Draft the County Government financial statements, both in preliminary and final forms,
- 4) Type and reproduce the annual report,
- 5) Prepare a closing schedule that highlights the relevant activities and availability dates for workpapers and reports,
- 6) Make available to the Contractor closing workpapers/binders prepared for County funds. The County does not prepare separate schedules under a Prepared by Client (PBC) request, and
- 7) Provide for a planning meeting with County staff and component unit agencies.

- E. **Board of Investment Trustees Support.** The Board of Investment Trustees (BIT) must provide limited, temporary space to examine records and documents during the audit, and the capability to view on-line documents. The BIT must also:

- 1) Draft the Employee Retirement Plans financial statements, both in preliminary and final forms,
- 2) Type confirmation requests and other correspondence requesting information from outside entities,
- 3) Provide access to on-line documents, which should be used to the fullest extent possible by the Contractor, and retrieve and replace source documents located in BIT Offices, and
- 4) Type and reproduce the annual report.

#### **Article IV. County Responsibilities (continued)**

**F. Department of Transportation Support.** The Department of Transportation must:

- 1) Participate in an audit planning meeting with the Contract Administrator and Contractor,
- 2) Prepare the National Transit Database Report's Federal Funding Allocation Statistics Form,
- 3) Prepare the passenger mile data collection calculation,
- 4) Provide access to general ledger reports, and
- 5) Provide access to vendor contracts and monthly vendor contractor reports.

**G. Department of Technology Services Support.** The Department of Technology Services must:

- 1) Provide access to appropriate staff for interviews,
- 2) Supply listings, reports, policies, and logs as required to support the audit,
- 3) Generate limited rights audit user IDs for use within the local network, and
- 4) Coordinate all responses to Information Technology requests.

The Department of Technology Services will not provide support for audit work related to the component units included in the Montgomery County, Maryland reporting entity.

**H. Montgomery County Union Employees Deferred Compensation Plan Support.** The Montgomery County Union Employees Deferred Compensation Plan should provide limited, temporary space to examine records and documents during the audit, and the capability to view on-line documents. The Montgomery County Union Employees Deferred Compensation Plan should also:

- 1) Provide contact information for the predecessor auditor and authorize the predecessor auditor to speak with BDO USA regarding the predecessor auditor's work performed for the Montgomery County Union Employees Deferred Compensation Plan,
- 2) Draft its financial statements, both in preliminary and final forms,
- 3) Type confirmation requests and other correspondence requesting information from outside entities,
- 4) Provide access to on-line documents, which should be used to the fullest extent possible by the Contractor, and retrieve and replace source documents located in Montgomery County Union Employees Deferred Compensation Plan Offices, and
- 5) Type and reproduce the annual report.



## ARTICLE V. PAYMENTS

A. **Payments for Article I. "Scope of Work," Paragraph A. Basic Work.** The Council will pay the Contractor the following fixed fees for the items in Article I. "Scope of Work", Paragraph A. Basic Work:

- 1) **Payment for Subparagraphs 1, 2, 3, 4, 5, 11a, and 12a – County Government Basic Financial Statements Audit, Single Audit, Maryland State Uniform Financial Report, Arbitrage, Fiscal Year Closing, related Management Letter, and assistance with GFOA Certificate of Achievement for Excellence in Financial Reporting** – The County will pay the Contractor a fixed fee not to exceed \$243,466 for Fiscal Year 2012 audit services performed under this portion of the Contract. The Council will pay the Contractor on a monthly basis for work completed during the month, on the condition that the Contract Administrator determines, in his or her sole discretion, that the Contractor is making satisfactory progress toward completing all auditing services. The Independent Audit Non-Departmental Account is the source of funds. The Contract Administrator is responsible for approving invoices and paying the Contractor for services satisfactorily performed under this portion of the Contract.
- 2) **Payment for Subparagraph 6 – Agreed-Upon Procedures for the National Transit Database Report** – The County will pay the Contractor a fixed fee not to exceed \$10,000 for Fiscal Year 2012 audit services performed under this portion of the Contract. The County will pay the Contractor in two equal installments, with the first installment paid upon completion of the Contractor's field work, and the second installment paid after the Council accepts the deliverables described in Article II. "Deliverables", Paragraph B., Subparagraph 5. The Independent Audit Non-Departmental Account is the source of funds. The Contract Administrator is responsible for approving invoices and paying the Contractor for services satisfactorily performed under this portion of the Contract.
- 3) **Payment for Subparagraph 7 – Agreed-Upon Procedures for the Chief Financial Officer's Annual Certification of Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities** – The County will pay the Contractor a fixed fee not to exceed \$2,804 for Fiscal Year 2012 audit services performed under this portion of the Contract. The County will pay the Contractor after the Council accepts the deliverables described in Article II. "Deliverables", Paragraph B., Subparagraph 6. The Solid Waste Disposal Fund will be the source of funds. The Department of Transportation is responsible for approving invoices and paying the Contractor for services satisfactorily performed under this portion of the Contract.
- 4) **Payment for Subparagraph 8 – 9-1-1 System Audit** – The State of Maryland will pay the Contractor a fixed fee not to exceed \$4,450 for Fiscal Year 2012 audit services performed under this portion of the Contract. The State will pay the Contractor upon the Emergency Number Systems Board's acceptance of the deliverables described in Article II. "Deliverables", Paragraph B., Subparagraph 7. Emergency Number Systems Board funds will be the source of funds. The Emergency Number Systems Board is responsible for approving invoices and paying the Contractor for services satisfactorily performed under this portion of the Contract.

**Article V. Payments (continued)**

- 6) **Payment for Subparagraphs 9, 11b, and 12b – Employee Retirement Plans Basic Financial Statements Audit, related Management Letter, and assistance with GFOA Certificate of Achievement for Excellence in Financial Reporting** – The County will pay the Contractor a fixed fee not to exceed \$36,720 for Fiscal Year 2012 audit services performed under this portion of the Contract. The County will pay the Contractor on a monthly basis for work completed, on the condition that the Board of Investment Trustees' designee determines that the Contractor is making satisfactory progress toward completing all auditing services. The Employees' Retirement System, the Retirement Savings Plan, and the County's General Fund (on behalf of the Deferred Compensation Plan) will be the source of funds. The Board of Investment Trustees' designee is responsible for approving invoices and paying the Contractor for services satisfactorily performed under this portion of the Contract.
- 7) **Payment for Subparagraphs 10, 11c – Montgomery County Union Employees Deferred Compensation Plan Audit and related Management Letter** – The County will pay the Contractor a fixed fee not to exceed \$18,000 for Fiscal Year 2012 audit services performed under this portion of the Contract. The County will pay the Contractor on a monthly basis for work completed, on the condition that the Contract Administrator determines, in his or her sole discretion, that the Contractor is making satisfactory progress toward completing all auditing services. The Independent Audit Non-Departmental Account is the source of funds. The Contract Administrator is responsible for approving invoices and paying the Contractor for services satisfactorily performed under this portion of the Contract.

**B. Payments for Article I. "Scope of Work," Paragraph B. Optional Work.** The County will pay the Contractor the following fixed fees for the items in Article I. "Scope of Work", Paragraph B. Optional Work:

- 1) **Payment for Subparagraphs 1 and 2 – Auditing or Accounting Services** – The County will pay the Contractor the following fixed hourly rates for optional auditing and accounting services under a Council-approved amendment to this Contract. The fee will be subject to a not-to-exceed amount established in the Contract amendment. The County will pay the Contractor upon completion of the optional work. The Contract Administrator is responsible for approving invoices and paying the Contractor for services performed under this portion of the Contract.

Staff Level	Fixed Hourly Rate
Partner	\$269
Manager	\$140
Senior	\$110
Staff Auditor	\$84
Specialists	TBD on required skills
Alternate Composite Rate (when already on site)	\$165

## Article V. Payments (continued)

- 2) **Payment for Subparagraph 3 – Comfort or Consent Letters** – The County will pay the Contractor a fixed fee not to exceed \$3,000 for each:

- Letter consenting to the use of the Contractor's report on the County's Fiscal Year 2012 financial statements.
- Comfort letter related to the County's Fiscal Year 2012 financial statements.

The County will pay the Contractor upon completion of the optional work. The Cost of Issuance appropriation will be the source of funds. The Department of Finance is responsible for approving invoices and paying the Contractor for services performed under this portion of the Contract.

- C. **Invoices.** The Contractor must send all invoices under this Contract to the Contract Administrator, Office of Legislative Oversight, Council Office Building, 100 Maryland Avenue, Rockville, MD 20850. The Contract Administrator will forward invoices to be approved and paid by the Department of Finance, Department of Transportation, the Emergency Number Systems Board, and the Board of Investment Trustees to those organizations for approval and payment.
- D. **Payments in Excess of the Firm Fixed Fee.** If the Contractor reasonably determines that the hours to complete the Scope of Services will exceed the originally estimated amount, the Contractor must submit a written request for additional fees to the Contract Administrator for approval by the Council. The Contractor's written request must include all reasons for the additional time, as well as the new estimate of hours to complete the task. Any additional hours and fees approved by the Council must be authorized by a contract amendment. There is no guarantee that the Council will authorize additional hours or fees.
- E. **Payments in Subsequent Years.** The prices in this Contract are firm for a period of two years after execution of the contract. Any request for a price adjustment after the two-year period is subject to the following:
- 1) Any request for a price adjustment must be submitted in writing to the Contract Administrator and accompanied by supporting documentation justifying the Contractor's request. A request for any price adjustment may not be approved unless the Contractor submits to the County Council sufficient justification to support that the Contractor's request is based on its net increase in costs in delivering the goods/services under the contract;
  - 2) Any request for a price adjustment must be submitted sixty (60) days prior to the contract expiration date, if the contract is being amended;
  - 3) Any request for a price adjustment may not be approved that exceeds the amount of the annual percentage change of the Consumer Price Index (CPI) for the twelve-month period immediately prior to the date of the request. The request shall be based upon the CPI for all urban consumers issued for the Washington-Baltimore, DC-MD-VA-WV Metropolitan area by the United States Department of Labor, Bureau of Labor Statistics for all items;
  - 4) Any price adjustment must be executed by written contract amendment;
  - 5) Any price adjustment must be approved by the County Council; and
  - 6) The Council will approve only one price adjustment for each contract term, if a price adjustment is approved.

## **ARTICLE VI. TERM**

- A. The term of this Contract is for fifteen (15) months from the date of signature by the Council President. Before the contract term ends, the Council may (but is not required to) renew this contract for three additional one year periods, one year at a time. The Council will determine whether renewal is in the best interest of the County. Contractor's satisfactory performance does not guarantee renewal of this Contract.
- B. During the first engagement period the Contractor will complete the audits of financial statements for the fiscal year ending June 30, 2012 and the calendar year ending December 31, 2012. Upon renewal of the Contract, the Contractor will complete the audits of financial statements for the fiscal years ending June 30, 2013, 2014, and 2015 and for the calendar years ending December 31, 2013, 2014, and 2015.
- C. All provisions that apply after the contract term, including but not limited to guarantees, disputes, and indemnifications, are deemed to survive the term.
- D. In the event of a merger, acquisition or other change in the legal entity of the Contractor, or in the event of a change in the Contractor's legal name, the contract will continue, contingent upon the County Council's approval, which will not be unreasonably withheld. In the event of a merger, acquisition, or other change in the legal entity of the Contractor or a change in the Contractor's legal name, the Contractor is required to enter into the County's standard amendment for a name change or an assignment of the Contract.

## **ARTICLE VII. CONTRACT ADMINISTRATOR**

- A. The person identified below functions as the Contract Administrator for this Contract:  
Name: Leslie Rubin  
Address: Office of Legislative Oversight, 100 Maryland Avenue, Room 509, Rockville, Maryland 20850  
Phone: (240) 777-7998 Fax: (240) 777-7879  
E-mail: leslie.rubin@montgomerycountymd.gov
- B. The Contract Administrator's duties include, but are not limited to the following:
  - 1) Serving as liaison between the County Council and Contractor,
  - 2) Giving direction to the Contractor to ensure satisfactory and complete performance,
  - 3) Monitoring and inspecting the Contractor's performance to ensure acceptable timeliness and quality,
  - 4) Serving as Records Custodian for this contract, including documentation of Wage Requirements,
  - 5) Accepting or rejecting the Contractor's performance,
  - 6) Furnishing timely written notice of the Contractor's performance failures to the County Council, as appropriate,
  - 7) Preparing required reports,
  - 8) Approving or rejecting invoices for payment,
  - 9) Recommending contract modifications or terminations to the County Council,
  - 10) Issuing notices to proceed, and
  - 11) Monitoring and verifying compliance with the Minority, Female, Disabled Person Subcontractor Performance Plan.
- C. During any prolonged absence of the Contract Administrator, the Director of the Office of Legislative Oversight will serve as the alternate Contract Administrator.

**Article VII. Contract Administrator (continued)**

**D.** Unless the Council President changes this delegation of authority in writing, no other person is authorized to perform the functions of the Contract Administrator for this Contract.

**ARTICLE VIII. CONTRACT DOCUMENTS & PRIORITY OF DOCUMENTS**

The following documents are incorporated by reference into and made part of this Contract and are listed in order of legal precedence below in the event of a conflict in their terms: **(1)** the terms contained in this Contract document; **(2)** the "General Conditions of Contract between County Council and Contractor" (Attachment A) and the "Minority-Owned Business Addendum to the General Conditions of Contract Between County and Contractor" and its companion document "Minority, Female, Disabled Person Subcontractor Performance Plan" (Attachment B); **(3)** Request for Proposal (RFP) #1012283, dated September 15, 2011 (Attachment C); **(4)** the "Business Associate Agreement" between Council and Contractor (Attachment D); **(5)** the Contractor's proposal dated November 3, 2011 (Attachment E); and **(6)** a summary of work (Attachment F).

**(Signature Page Follows)**

WITNESS:

**BDO USA, LLP**

BY: \_\_\_\_\_  
Neena Masih, Partner  
BDO USA, LLP

DATE: \_\_\_\_\_

**Montgomery County, Maryland**

BY: \_\_\_\_\_  
Roger Berliner, President  
Montgomery County Council

DATE: \_\_\_\_\_

**Approved as to form and legality:**

BY: \_\_\_\_\_  
Walter Wilson  
Associate County Attorney

DATE: \_\_\_\_\_

**GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR****1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION**

The contractor certifies that all information the contractor has provided or will provide to the County Council is true and correct and can be relied upon by the County Council in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County Council to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

Representatives of the County Council may examine the contractor's and any first-tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first-tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first-tier subcontracts.

**2. AMERICANS WITH DISABILITIES ACT**

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, and ADA Amendments Act of 2008, Pub. Law 110-325, as amended, currently found at 42 U.S.C., § 12101, et seq.

**3. APPLICABLE LAWS**

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

The prevailing wage law (County Code §11B-33C) applies to construction contracts. Specifically, under County law, a County financed construction contract is subject to the Montgomery County Code regarding compliance with the prevailing wage paid to construction workers, as established for the County by the Maryland State Commissioner of Labor and Industry. Additional information regarding the County's prevailing wage requirements is contained within this solicitation/contract (see the provision entitled "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor").

Furthermore, certain non-profit and governmental entities may purchase supplies and services, similar in scope of work and compensation amounts provided for in a County contract, using their own contract and procurement laws and regulations, pursuant to the Maryland State Finance and Procurement Article, Section 13-101, et seq.

Contractor and all of its subcontractors must comply with the provisions of County Code §11B-35A and must not retaliate against a covered employee who discloses an illegal or improper action described in §11B-35A. Furthermore, an aggrieved covered employee under §11B-35A is a third-party beneficiary under this Contract, who may by civil action recover compensatory damages including interest and reasonable attorney's fees, against the contractor or one of its subcontractors for retaliation in violation of that Section. (Effective June 28, 2010).

Contractor and all of its subcontractors must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse, in accordance with County Code §11B-33D. An aggrieved employee, is a third-party beneficiary who may, by civil action, recover the cash equivalent of any benefit denied in violation of §11B-33D or other compensable damages. (Effective January 1, 2011).

**4. ASSIGNMENTS AND SUBCONTRACTS**

The contractor may not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the County Council. Unless performance is separately and expressly waived in writing by the County Council, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the County Council. Any subcontract for any work hereunder must comport with the terms of this Contract and County law, and must include any other terms and conditions that the County deems necessary to protect its interests.

**5. CHANGES**

The County Council may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the County Council issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

**6. CONTRACT ADMINISTRATION**

A. In accordance with the Montgomery County Code § 29A-5(b)(9), the Office of Legislative Oversight (OLO) will administer the contract. The contract administrator, subject to paragraph B below, is the Office representative designated by the Director of OLO, and is authorized to:

- (1) serve as liaison between the County and the contractor;
- (2) give direction to the contractor to ensure satisfactory and complete performance;
- (3) monitor and inspect the contractor's performance to ensure acceptable timeliness and quality;
- (4) serve as records custodian for this contract, including wage and prevailing wage requirements;
- (5) accept or reject the contractor's performance;
- (6) furnish timely written notice of the contractor's performance failures to the Director, Department of General Services, and to the County Attorney, as appropriate;
- (7) prepare required reports;
- (8) approve or reject invoices for payment;
- (9) recommend contract modifications or terminations to the Director, Department of General Services;
- (10) issue notices to proceed; and
- (11) monitor and verify compliance with any MFD Performance Plan.

- B. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

#### 7. COST & PRICING DATA

Chapter 11B of the County Code and the Montgomery County Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants representatives of the County Council access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County Council, including profit or fee, may, at the option of the County Council, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

#### 8. DISPUTES

Any dispute arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Department of General Services, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Department of General Services, for the purpose of dispute resolution. The Department Head or his/her designee, must forward to the Director, Department of General Services, a copy of any written resolution of a dispute. The Department Head may delegate this responsibility to another person (other than the contract administrator). A contractor must notify the contract administrator of a claim in writing, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Department of General Services or designee. The contractor waives any dispute or claim not made in writing and received by the Director, Department of General Services, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Department of General Services, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the contractor agrees to be made a party to any related dispute involving another contractor.

#### 9. DOCUMENTS, MATERIALS AND DATA

All documents materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

#### 10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

#### 11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

#### 12. ETHICS REQUIREMENTS/POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b)
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11B-53.

Furthermore, the contractor specifically agrees to comply with Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 of the Montgomery County Code.

In addition, the contractor must comply with the political contribution reporting requirements currently codified under Title 14 of the Election Law, Annotated Code of Maryland.

#### 13. GUARANTEE

- A. Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County Council's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County Council's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County Council and to the County Council's satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D. The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.
- E. Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.



#### 14. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

#### 15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE

In addition to the provisions stated above in Section 3. "Applicable Laws," contractor must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this contract. Furthermore, contractor must enter into the County's standard Business Associate Agreement or Qualified Service Organization Agreement when contractor or the County, as part of this contract, may use or disclose to one another, to the individual whose health information is at issue, or to a third-party, any protected health information that is obtained from, provided to, made available to, or created by, or for, the contractor or the County.

#### 16. IMMIGRATION REFORM AND CONTROL ACT

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

#### 17. INCONSISTENT PROVISIONS

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

#### 18. INDEMNIFICATION

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County Council, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

#### 19. INDEPENDENT CONTRACTOR

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County or County Council.

#### 20. INSPECTIONS

County Council representatives have the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

#### 21. INSURANCE

Prior to contract execution by the County Council, the proposed awardee/contractor must obtain at its own cost and expense the insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(s) licensed or qualified to do business in the State of Maryland and acceptable to the County's Division of Risk Management. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County Council, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Contract Administrator one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Thirty days written notice to the County of cancellation or material change in any of the policies is required, unless a longer period is required by applicable law. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. The Director, Office of Legislative Oversight, may waive the requirements of this section, in whole or in part.

**TABLE A. - INSURANCE REQUIREMENTS**  
(See Paragraph #21 Under the General Conditions of Contract  
Between County and Contractor)

CONTRACT DOLLAR VALUES (IN \$1,000's)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Workers Compensation (for contractors with employees)				
Bodily Injury by Accident (each)	100	100	100	See Attachment
Disease (policy limits)	500	500	500	
Disease (each employee)	100	100	100	
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300	500	1,000	See Attachment
Minimum Automobile Liability (including owned, hired and non-owned automobiles)				
Bodily Injury each person	100	250	500	See Attachment
each occurrence	300	500	1,000	
Property Damage each occurrence	300	300	300	
Professional Liability* for errors, omissions and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000	250	500	1,000	See Attachment

Certificate Holder

Montgomery County Maryland (Contract #)  
Office of Procurement  
Rockville Center  
255 Rockville Pike, Suite 180  
Rockville, Maryland 20850-4166

\*Professional services contracts only

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**TABLE B. - INSURANCE REQUIREMENTS**  
 (See Paragraph #21 Under the General Conditions of Contract  
 Between County and Contractor)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See Attachment

Certificate Holder

Montgomery County Maryland (Contract #)  
 Office of Procurement  
 Rockville Center  
 255 Rockville Pike, Suite 180  
 Rockville, Maryland 20850-4166

**(Remainder of Page Intentionally Left Blank)**

## 22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

## 23. NON-CONVICTION OF BRIBERY

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

## 24. NON-DISCRIMINATION IN EMPLOYMENT

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County Council that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

The contractor must bind its subcontractors to the provisions of this section.

## 25. PAYMENTS

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Office of Legislative Oversight prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County Council that authorizes the contractor to perform work for the next contract term.

## 26. PERSONAL PROPERTY

All furniture, office equipment, equipment, vehicles, and other similar types of personal property specified in the contract, and purchased with funds provided under the contract, become the property of the County upon the end of the contract term, or upon termination or expiration of this contract, unless expressly stated otherwise.

## 27. TERMINATION FOR DEFAULT

The County Council may terminate the contract in whole or in part, and from time to time, whenever the County Council determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Office of Legislative Oversight, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County Council's written notice. However, if the County Council determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County Council may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

## 28. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County Council, in whole or in part, upon written notice to the contractor, when the County Council determines this to be in its best interest. The termination for convenience is effective on the date specified in the County Council's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

## 29. TIME

Time is of the essence.

## 30. WORK UNDER THE CONTRACT

Work may not commence under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

## 31. WORKPLACE SAFETY

The contractor must ensure adequate health and safety training and/or certification, and must comply with applicable federal, state and local Occupational Safety and Health laws and regulations.

**THIS FORM MUST NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY.**

**Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor**

- A. This contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.
- B. Contractor must subcontract a percentage of the total dollar value of the contract, including all modifications and renewals, to certified minority owned businesses. The MFD subcontracting goal may be waived under appropriate circumstances by submission of a letter to the Minority Procurement Officer. The letter must explain why a waiver is appropriate. The Director of the Department of General Services or designee may waive, in whole or in part, the MFD subcontracting goal if the Director determines that a waiver is appropriate under Section 7.3.3.5 of the Montgomery County Procurement Regulations. In determining if a waiver should be granted, the Director may require the Contractor to submit additional information; the Director may require the Contractor to submit some or all of this information on forms approved by the Director.
- C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.
- D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.
- E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.
- F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.
- G. Before receiving final payment under this contract, Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.
- H. If the Contractor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan, to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, the Contractor is in breach of this contract. In the event of a breach of contract under this addendum, the Contractor must pay to the County liquidated damages equal to the difference between all amounts the Contractor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Contractor and County acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to ascertain, and that the liquidated damages provided for in this addendum are fair and reasonable in estimating the damage to the County of a breach of this addendum by Contractor. In addition, the County may terminate the contract. As the result of a breach under this addendum, The Director of the Department of General Services must find the Contractor non-responsible for purposes of future procurement with the County for the ensuing three years.

**MONTGOMERY COUNTY, MARYLAND**  
**MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR**  
**PERFORMANCE PLAN**

Contractor's Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

CONTRACT NUMBER/PROJECT DESCRIPTION: \_\_\_\_\_

A. Individual assigned by Contractor to ensure Contractor's compliance with MFD Subcontractor Performance Plan:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

B. This Plan covers the life of the contract from contract execution through the final contract expiration date.

C. The percentage of total contract dollars, including modifications and renewals, to be paid to all certified minority owned business subcontractors, is \_\_\_\_\_% of the total dollars awarded to Contractor.

D. Each of the following certified minority owned businesses will be paid the percentage of total contract dollars indicated below as a subcontractor under the contract.

I hereby certify that the business(s) listed below are certified by one of the following: Maryland Department of Transportation (MDOT); Virginia Small, Woman and Minority Owned Business (SWAM); Federal SBA (8A); MD/DC Minority Supplier Development Council (MSDC); Women's Business Enterprise National Council (WBENC); or City of Baltimore. A Certification Letter must be attached. For assistance, call 240-777-9912.

1. Certified by: \_\_\_\_\_

Subcontractor Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor : \_\_\_\_\_

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

2. Certified by: \_\_\_\_\_  
 Subcontractor Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_  
 CONTACT PERSON: \_\_\_\_\_  
 Circle MFD Type:

AFRICAN AMERICAN  
 FEMALE

ASIAN AMERICAN  
 HISPANIC AMERICAN

DISABLED PERSON  
 NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: \_\_\_\_\_

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

3. Certified by: \_\_\_\_\_  
 Subcontractor Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_  
 CONTACT PERSON: \_\_\_\_\_  
 Circle MFD Type:

AFRICAN AMERICAN  
 FEMALE

ASIAN AMERICAN  
 HISPANIC AMERICAN

DISABLED PERSON  
 NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: \_\_\_\_\_

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

4. Certified By: \_\_\_\_\_  
 Subcontractor Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_  
 CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN  
FEMALE

ASIAN AMERICAN  
HISPANIC AMERICAN

DISABLED PERSON  
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: \_\_\_\_\_

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

E. The following language will be inserted in each subcontract with a certified minority owned business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

F. Provide a statement below, or on a separate sheet, that summarizes maximum good faith efforts achieved, and/or the intent to increase minority participation throughout the life of the contract or the basis for a full waiver request.

G. A full waiver request must be justified and attached.

Full Waiver Approved:

Partial Waiver Approved:

\_\_\_\_\_  
MFD Program Officer

Date: \_\_\_\_\_

\_\_\_\_\_  
MFD Program Officer

Date: \_\_\_\_\_

Full Waiver Approved:

Partial Waiver Approved:

\_\_\_\_\_  
Director

Date: \_\_\_\_\_

\_\_\_\_\_  
Director

Date: \_\_\_\_\_

Department of General Services

Department of General Services

The Contractor submits this MFD Subcontractor Performance Plan (Plan Modification No. \_\_\_\_\_) in accordance with the Minority Owned Business Addendum to General Conditions of Contract between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: \_\_\_\_\_

Signature

Typed Name

Date



2. TYPE CORPORATE CONTRACTOR'S NAME: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Date

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign contractual agreements for the corporation.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

APPROVED:

\_\_\_\_\_  
Director, Department of General Services

\_\_\_\_\_  
Date

Section 7.3.3.4(a) of the Procurement Regulations requires:

The Contractor to notify the Director, Department of General Services of any proposed change to the Subcontractor Performance Plan.

## **Attachment C to Contract #1012283**

### **REQUEST FOR PROPOSALS**

**RFP #1012283**

Professional Auditing Services

September 15, 2011

RFP intentionally left out of the packet.

Copies are available upon request to the Office of Legislative Oversight or at

<http://www.montgomerycountymd.gov/content/council/olo/reports/pdf/CouncilRFP1012283forAuditServices.pdf>

and

[http://www.montgomerycountymd.gov/content/council/olo/reports/pdf/RFP\\_Supplement\\_Attachment\\_H4.pdf](http://www.montgomerycountymd.gov/content/council/olo/reports/pdf/RFP_Supplement_Attachment_H4.pdf)

## AGREEMENT

This Agreement (the "Agreement") between **MONTGOMERY COUNTY, MARYLAND** ("County" or "Covered Entity") and **BDO USA LLP**, 7101 Wisconsin Avenue, Suite 800, Bethesda, MD 20814 ("Contractor" or "Business Associate") is dated and effective as of the date of signature of the County's Director, Office of Procurement.

WHEREAS, COVERED ENTITY is disclosing or making available certain data, which may include Protected Health Information as that term is defined in 45 C.F.R. §164.501 ("PHI"), to CONTRACTOR in connection with CONTRACTOR'S performance of employment and support for COVERED ENTITY, pursuant to Montgomery County, Maryland, Contract # 1012283 (the "Services");

WHEREAS, COVERED ENTITY is or may be subject to the requirements of 42 U.S.C. §§1171, *et seq.*, enacted by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations promulgated thereunder (65 Fed. Reg. 82462, *et seq.*, December 20, 2000, as modified by 67 Fed. Reg. 53183, August 14, 2002 (the "Privacy Regulations")).

NOW, THEREFORE, the parties agree as follows:

1. CONTRACTOR may use and disclose PHI only as required to perform Services, as permitted herein, or as required by law. CONTRACTOR must not use or disclose PHI received from COVERED ENTITY in any manner that would constitute a violation of the Privacy Regulations if done by COVERED ENTITY.
2. CONTRACTOR must use appropriate safeguards to prevent uses or disclosures of PHI that are not permitted by this Agreement or the Privacy Regulations. Furthermore, CONTRACTOR must take reasonable precautions to protect the PHI from loss, misuse and unauthorized access, disclosure, alteration and destruction.
3. CONTRACTOR must, as soon as reasonably practicable after becoming aware of any use or disclosure of PHI in violation of this Agreement, report any such use or disclosure to COVERED ENTITY.
4. CONTRACTOR must obtain and maintain an agreement with each agent or subcontractor that has or will have access to the PHI, which is received from, or created or received by CONTRACTOR in the course of performing Services for COVERED ENTITY, or otherwise, pursuant to which agreement such agent or subcontractor must be bound by the same restrictions, terms and conditions that apply to CONTRACTOR under this Agreement with respect to such PHI.

5. Within a reasonable time after a request by COVERED ENTITY for access to PHI about an individual contained in a Designated Record Set, CONTRACTOR must make available to COVERED ENTITY such PHI. "Designated Record Set" shall mean a group of records maintained by or for COVERED ENTITY that is (i) the medical records and billing records about COVERED ENTITY patients maintained by or for COVERED ENTITY, or (ii) used, in whole or in part, by or for COVERED ENTITY to make decisions about its patients. As used herein the term "Record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for COVERED ENTITY. For the purposes of this, and other paragraphs in this Agreement, CONTRACTOR is responsible for identifying and locating the requested PHI and providing it to the COVERED ENTITY.

6. In the event that any individual requests access to PHI contained in a Designated Record Set directly from CONTRACTOR, then CONTRACTOR must, as soon as reasonably practicable, forward such request to COVERED ENTITY. Thereafter, any denials of access to the PHI requested shall be the responsibility of COVERED ENTITY.

7. Within a reasonable time after receipt of a request from COVERED ENTITY for the amendment of an individual's PHI contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), CONTRACTOR must provide such information to COVERED ENTITY for amendment, and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526, as determined in the sole discretion of the COVERED ENTITY. CONTRACTOR must make available for inspection to the COVERED ENTITY the requested PHI and provide the requested PHI to the COVERED ENTITY at the request of the COVERED ENTITY.

8. Within a reasonable time after notice by COVERED ENTITY to CONTRACTOR that COVERED ENTITY has received a request for an accounting of disclosures of PHI, other than related to the treatment of the patient, the processing of payments related to such treatment, or the operation of a covered entity or its business associate and not relating to disclosures made earlier than six (6) years prior to the date on which the accounting was requested, CONTRACTOR must make available to COVERED ENTITY such information as is in CONTRACTOR'S possession, and is required for COVERED ENTITY to make the accounting required by 45 C.F.R. §164.528, as determined in the sole discretion of the COVERED ENTITY. In the event the request for an accounting is delivered directly to CONTRACTOR, then CONTRACTOR must, as soon as reasonably practicable, forward such request to COVERED ENTITY. CONTRACTOR must make available for inspection to the COVERED ENTITY the requested PHI and provide the requested PHI to the COVERED ENTITY at the request of the COVERED ENTITY.

9. At COVERED ENTITY'S request, CONTRACTOR must make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of, COVERED ENTITY available to the Secretary of the Department of Health and Human Services for purposes of determining COVERED ENTITY'S compliance with the Privacy Regulations.

10. Unless otherwise limited herein, CONTRACTOR may:

a. use the PHI in its possession for its proper management and administration and to carry out the legal responsibilities of CONTRACTOR.

b. disclose PHI for the proper management and administration of CONTRACTOR, provided that such disclosures are required by law, or CONTRACTOR obtains reasonable assurances from the person or entity to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the limited purpose for which it was disclosed to the person or entity. In such instances, CONTRACTOR and the person or entity to whom the information is disclosed must agree that the person or entity will notify CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.

c. to provide data aggregation services related to the health care operations of the COVERED ENTITY in accordance with 45 C.F.R. 164.504(e)(2)(i)(B).

11. a. In the event that COVERED ENTITY determines that CONTRACTOR has materially breached the terms of this Agreement, COVERED ENTITY shall provide notice to CONTRACTOR of such material breach, and shall provide CONTRACTOR with a reasonable time to cure such breach, which shall not be less than ten (10) days. In the event that the breach is not cured within the specified period, COVERED ENTITY may terminate this Agreement. This paragraph is in addition to the provisions set forth in Paragraph 27 of the General Conditions of Contract Between County and Contractor, attached as Attachment A to Montgomery County, Maryland Contract # 1012283 ("General Conditions").

b. Anything herein to the contrary notwithstanding, this Agreement shall terminate when CONTRACTOR has completed performance of the Services, subject, however, to Section 12 below, as well as to Paragraph 10 of the General Conditions.

12. Upon termination of this Agreement, CONTRACTOR must either return or destroy all PHI received from COVERED ENTITY, or created or received by CONTRACTOR on behalf of COVERED ENTITY, and which CONTRACTOR still maintains in any form. Notwithstanding the foregoing, to the extent that it is not feasible to return or destroy such PHI, the terms and provisions of this Agreement shall survive termination of this Agreement with regard to such PHI. CONTRACTOR must limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI infeasible.

13. Compliance with the terms of this Agreement is a material term of any and all underlying agreements pursuant to which COVERED ENTITY is making available the PHI to CONTRACTOR. The parties understand and agree that termination of this Agreement, pursuant to paragraph 11(a), shall constitute a default by CONTRACTOR under any and all such underlying agreements, and shall give rise to COVERED ENTITY'S immediate right to terminate such underlying agreements, and other available rights and remedies, subject, however, to the cure provisions of paragraph 11(a) above.

14. This Agreement is governed by, and shall be construed in accordance with applicable federal law and the laws of the State of Maryland, without regard to choice of law principles.

15. Notwithstanding any other provision in this Agreement, this Agreement shall not be deemed to be an agreement by CONTRACTOR to disclose information that is privileged, protected or confidential under applicable law to the extent that such privilege, protection or confidentiality (a) has not been waived or (b) is not superseded by applicable law.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the day and year first written above.

**MONTGOMERY COUNTY, MD**

**BDO USA, LLP**

By: \_\_\_\_\_

By: \_\_\_\_\_

Typed: Roger Berliner

Typed: Neena Masih

Title: County Council President

Title: Partner, BDO USA, LLP

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **Attachment E to Contract #1012283**

### **BDO USA, LLP Proposal**

Dated November 3, 2011

Proposal intentionally left out of the packet.

Attachment F to Contract #1012283 between the County Council of Montgomery County, Maryland and BDO USA, LLP (BDO USA)

BDO USA, LLP is pleased to confirm our understanding of the services described in Contract #1012283 that we are to provide to the County Council of Montgomery County, Maryland for the fiscal year ending June 30, 2012. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements, of Montgomery County, Maryland as of and for the fiscal year ending June 30, 2012. As part of our audit, we will also issue a separate comprehensive annual financial report for the pension trust funds of Montgomery County, Maryland as of and for the fiscal year ending June 30, 2012. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement Montgomery County's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to Montgomery County's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis
2. Budgetary Comparison Information for the General, Revenue Stabilization, Housing Initiative and Grants Funds
3. Schedule of Funding Progress

We have also been engaged to report on supplementary information other than RSI that accompanies Montgomery County, Maryland's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole:

1. Schedule of Expenditures of Federal Awards.
2. Combining and Individual Fund Financial Statements and Supplementary Schedules

The following other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and for which our auditor's report will not provide an opinion or any assurance:

1. Introductory Section
2. Statistical Tables

BDO USA is accepting the Montgomery County Council as a client in reliance on information obtained during the course of our client acceptance procedures. Neena Masih has been assigned the role of engagement partner and is responsible for directing the engagement and issuing the appropriate report on Montgomery County, Maryland's financial statements.



## Audit Objectives

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. The objective also includes reporting on:

- Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

The reports on internal control and compliance will each include a statement that the report is intended solely for the information and use of management, the body or individuals charged with governance, others within Montgomery County, Maryland, specific legislative or regulatory bodies, federal awarding agencies, and if applicable, pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Our audit will be conducted in accordance with the accounting and auditing standards identified in Article III, Contractors Responsibilities, Paragraph C, of Contract # 1012283. If our opinions on the financial statements or the Single Audit compliance opinions are other than unqualified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

## Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. Management is also responsible for identifying government award programs and understanding and complying with the compliance requirements, and for preparation of the schedule of expenditures of federal awards in accordance with the requirements of OMB Circular A-133.

Management is responsible for establishing and maintaining effective internal controls, including internal controls over compliance, and for evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met and that there is reasonable assurance that government programs are administered in compliance with compliance requirements.

You are also responsible for the selection and application of accounting principles; for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of Montgomery County, Maryland and the respective changes in financial position and, where applicable, cash flows in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is also responsible for making all financial records and related information available to us and for ensuring that management and financial information is reliable and properly recorded. Your responsibilities also include identifying significant vendor relationships in which the vendor has responsibility for program compliance and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting Montgomery County, Maryland involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting Montgomery County, Maryland received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that Montgomery County, Maryland complies with applicable laws, regulations, contracts, agreements, and grants. Additionally, as required by OMB Circular A-133, it is management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan. You are responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon OR make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter.

This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

#### **Audit Procedures - General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to Montgomery County, Maryland or to acts by management or employees acting on behalf of Montgomery County, Maryland. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because an audit is designed to provide reasonable, but not absolute assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us.

In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorney as part of the engagement, and they may bill you for responding to this inquiry; at the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

#### **Audit Procedures - Internal Controls**

Our audit will include obtaining an understanding of Montgomery County, Maryland and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by OMB Circular A-133, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to OMB Circular A-133.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and OMB Circular A-133.

#### **Audit Procedures - Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of Montgomery County, Maryland's compliance with applicable laws and regulations and the provisions of contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

OMB Circular A-133 requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs.

Our procedures will consist of tests of transactions and other applicable procedures described in the OMB Circular A-133 Compliance Supplement for the types of compliance requirements that could have a direct and material effect on each of Montgomery County, Maryland's major programs. The purpose of these procedures will be to express an opinion on Montgomery County, Maryland's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to OMB Circular A-133.

At the conclusion of the engagement, we will complete the appropriate sections of and electronically certify the Data Collection Form that summarizes our audit findings. We will provide a final copy of our reports in a pdf file to Montgomery County, Maryland; however, it is management's responsibility to upload the pdf version of the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) and complete the appropriate sections of the Data Collection Form. Management is responsible for electronically certifying the Data Collection Form and electronically submitting the completed Data Collection Form to the Federal Audit Clearinghouse. It is management's responsibility to provide the reporting package to pass-through entities, if required. The Data Collection Form and the reporting package must be submitted electronically within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the oversight agency for audit.

#### **E-mail Communication**

In connection with this engagement, we may communicate with you or others via e-mail. As e-mails can be intercepted, disclosed, used, and/or otherwise communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed, we cannot ensure that e-mails from us will be properly delivered and read only by the addressee. Therefore, we disclaim and waive any liability for interception or unintentional disclosure of e-mail transmissions, or for the unauthorized use or failed delivery of e-mails transmitted by us in connection with the performance of this engagement.

#### **Ownership of Working Papers**

The working papers prepared in conjunction with our audit are the property of our Firm, constitute confidential information, and will be retained by us in accordance with Article III, Contractor Responsibilities, Paragraph L of Contract #1012283.

However, pursuant to authority given by law or regulation, we may be requested to make certain working papers available to Montgomery County, Maryland's oversight agency, or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such working papers will be provided under the supervision of BDO USA personnel. Furthermore, upon request, we may provide photocopies of selected working papers to the aforementioned parties. These parties may intend or decide to distribute the photocopies of information contained therein to others, including other governmental agencies.

#### **Reproduction of Audit Report**

If Montgomery County, Maryland plans any reproduction or publication of our report, or any portion of it, copies of masters' or printers' proofs of the entire document, or if there is no proof, a copy of the entire document in its final form, should be submitted to us in sufficient time for our review and written approval before printing. You also agree to provide us with a copy of the final reproduced material for our written approval before it is distributed. If, in our professional judgment, the circumstances require, we may withhold our written approval.

### **Posting of Audit Report and Financial Statements on Your Web Site**

You agree that, if you plan to post an electronic version of the financial statements and audit report on your Web site, you will ensure that there are no differences in content between the electronic version of the financial statements and audit report on your Web site and the signed version of the financial statements and audit report provided to management by BDO USA. You also agree to indemnify BDO USA from any and all claims that may arise from any differences between the electronic and signed versions.

### **Review of Documents for Sale of Debt or Other Securities**

The audited financial statements and our report thereon should not be provided or otherwise made available to recipients of any document to be used in connection with the sale of debt or other securities (including securities offerings on the Internet) without first submitting copies of the document to us in sufficient time for our review and written approval. If, in our professional judgment, the circumstances require, we may withhold our written approval.

### **Management Representations and Indemnification**

As required by auditing standards generally accepted in the United States of America, we will request certain written representations from management at the close of our audit to confirm oral representations given to us and to indicate and document the continuing appropriateness of such representations and reduce the possibility of misunderstanding concerning matters that are the subject of the representations. Because of the importance of management's representations to an effective audit, Montgomery County, Maryland agrees to release and indemnify BDO USA, its Permitted Assignees, and each of their respective employees from any liability and costs relating to our services rendered under Contract #1012283 attributable to any knowing misrepresentations by management.

Any indemnification given by Montgomery County, Maryland is subject to the notice requirements and damages limitations stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. Sec. 5-301, et seq. (2006 Repl. Vol.) (the "LGTC"); Md. Code Ann. Art. 25A, Sec. 1A (2005 Repl. Vol.); and Md. Code Ann., Cts. & Jud. Proc. Sec. 5-509 (2006 Repl. Vol.), (together the "County Indemnification Statutes"), all as amended from time to time.

### **Communications with Predecessor Auditors**

Auditing standards generally accepted in the United States of America require that we contact CliftonLarsonAllen LLP to review their working papers and discuss their audit of prior years' financial statements. It will be necessary that you authorize, in writing, CliftonLarsonAllen LLP to communicate with us for that purpose.

### **Availability of Records and Personnel**

You agree that all records, documentation, and information we request in connection with our audit will be made available to us (including those pertaining to related parties), that all material information will be disclosed to us, and that we will have full cooperation of, and unrestricted access to, your personnel during the course of the engagement.

You also agree to ensure that any third party valuation reports that you provide to us to support amounts or disclosures in the financial statements a) indicate the purpose for which they were intended, which is consistent with your actual use of such reports; and b) do not contain any restrictive language that would preclude us from using such reports as audit evidence.

### **Assistance by Your Personnel and Internet Access**

We also ask that your personnel prepare various schedules and analyses for our staff. However, except as otherwise noted by us, no personal information other than names related to Montgomery County, Maryland employees and/or customers should be provided to us. In addition, we ask that you provide high-speed Internet access to our engagement team, if practicable, while working on Montgomery County, Maryland's premises. This assistance will serve to facilitate the progress of our work and minimize costs to you.

### **Peer Review Reports**

*Government Auditing Standards* require that we provide you with a copy of our most recent quality control review report. Our latest peer review report accompanies this letter.

### **Other Services**

We are always available to meet with you and/or other executives at various times throughout the year to discuss current business, operational, accounting, and auditing matters affecting Montgomery County, Maryland. Whenever you feel such meetings are desirable, please let us know. We are also prepared to provide services to assist you in any of these areas.

If Montgomery County, Maryland wishes to assert that it complied, in all material respects, with specified laws and regulations, we could perform an engagement in accordance with the American Institute of Certified Public Accountants' attestation standards. The procedures we will perform, as required by auditing standards generally accepted in the United States of America and *Government Auditing Standards*, are more limited than if we were to express an opinion on management's assertions.

### **Independence**

Professional and certain regulatory standards require us to be independent, in both fact and appearance, with respect to Montgomery County, Maryland in the performance of our services. Any discussions that you have with personnel of our Firm regarding employment could pose a threat to our independence. Therefore, we request that you inform us immediately prior to any such discussions so that we can implement appropriate safeguards to maintain our independence.

### **Fees**

Our charges to Montgomery County, Maryland for the services described in Contract #1012283 are also outlined in Contract #1012283. The fees are based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. This fee is also based on the following assumptions: your personnel will prepare certain schedules and analyses for us and make available to us documents for our examination as and when requested; there will be no significant changes in the internal controls, accounting systems, key personnel, or structure of Montgomery County, Maryland; there will be no significant acquisitions or disposals of businesses; and there will not be any unanticipated increases in current operations requiring significant additional audit time. Should we encounter any unforeseen problems that will warrant additional time or expense, you will be notified of the situation and, if possible, the added cost.

This engagement includes only those services specifically described in Contract #1012283. In the event you request us to, or we are required to, respond to a subpoena, court order, government regulatory inquiries, or other legal process against Montgomery County, Maryland or its management for the production of documents and/or testimony relative to information we obtained and/or prepared during the course of this or any prior engagements, you agree to compensate us for all time we expend in connection with such response, at the rates set in Article V, Payments, Paragraph B, Subparagraph 1, and to reimburse us for all reasonable related out-of-pocket costs that we incur.

Our fees and costs will be billed monthly, and are payable upon receipt. If we do not receive any notice of dispute within 20 days of your receipt of the invoice, we will conclude that you have seen the invoice and find it acceptable.

### **Third Party Use**

BDO USA will perform the professional services provided in connection with this engagement solely for the information and use of Montgomery County, Maryland and the County Council of Montgomery County, Maryland. BDO USA does not anticipate and does not authorize reliance by any other party on its professional services. Any amendment to this provision must be made through a written document signed by the Council President of the Montgomery County Council and BDO USA.

### **Miscellaneous**

This letter is only intended to summarize the services specified in Contract #1012283, although we look forward to many more years of pleasant association with Montgomery County, Maryland and the Montgomery County Council. This engagement is a separate and discrete event and any future services will be covered by a separate amendment to Contract #1012283 to provide services.

Many banks have engaged a third party to electronically process cash or debt audit confirmation requests, and a few of those banks have mandated the use of this service. To the extent applicable, Montgomery County, Maryland hereby authorizes BDO USA to participate in this electronic confirmation process through the third party's Web site (e.g., by entering Montgomery County, Maryland's bank account information to initiate the process and then accessing the bank's confirmation response) and agrees that BDO USA shall have no liability in connection therewith.

Whenever possible, each provision of this letter shall be interpreted in such a manner as to be effective and valid under applicable laws, regulations, or published interpretations, but if any provision of this letter shall be deemed prohibited or invalid for any reason under such applicable laws, regulations, or published interpretations, such provisions shall be ineffective only to the extent of such prohibition, invalidity, or unenforceability and such revised provision shall be made a part of this letter as if it was specifically set forth herein. Furthermore, the provisions of the foregoing sentence shall not invalidate the remainder of such provision or the other provisions of this letter.